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ELECTION COMMISSION, INDIA

NOTIFICATIONS

*New Delhi, the 16th June 1953*

**S.R.O. 1286.**—Whereas the election of Shri Sarup Singh, as a member of the Legislative Assembly of the State of Punjab, from the Amritsar City East constituency of that assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Rajinder Singh, s/o Sardar Jewan Singh, Kucha Kamboan, Katra Jallianwala, Amritsar;

And Whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, JULLUNDUR.

CORAM:

Shamsher Bahadur Bar-at-Law—*Chairman.*

Chhaju Ram, B.A. (Hons.) LL.B., P.C.S.—*Member.*

Mohindra Singh Pannun, M.A., LL.M., D.C.P.—*Member.*

ELECTION PETITION No. 181 of 1952

S. Rajindar Singh son of S. Jiwan Singh, resident of Kucha Kamboan, Katra Jallianwala, Amritsar—*Petitioner.*

*Versus*

1. S. Sarup Singh son of S. Sardul Singh, 25, Race course Road, Amritsar
2. Shri Het Ram son of Shri Sita Ram, Dhab Khatikan, Amritsar.
3. Shri Khushpal Singh son of Shri Sher Singh, House No. 2260/3, Kucha Kamboan, Amritsar.
4. Shri Faqir Chand son of Shri Ram Chand, 152, Hussainpura West, Amritsar.
5. Harnam Singh son of S. Mehna Singh, House No. 567/3, Kucha Dasondha Singh, Amritsar.

6. Shri Abnash Chandar son of Shri Des Raj, house No. 3682-81/10 Kucha Gujralan, Amritsar.

7. Shri Balam Ram son of Shri Kirpa Ram, House No. M.R. 19, Kucha Harnami Shah, Amritsar.

8. Shri Baldev Parkash son of Shri Ram Dass, House No. 2596/3, Bazar Jallianwala, Amritsar.

9. Shri Tilak Raj son of Shri Mela Ram, House No. 2737, Kucha Bannian, Amritsar.

10. Shri Sant Ram son of Shri Kirpa Ram, Kucha Jarau Katra Ahluwalian, Amritsar—Respondents.

### JUDGMENT

(PER CHHAJU RAM—Member)

This is a petition under Section 81 of the Representation of People Act, 1951, challenging the election of S. Sarup Singh respondent No. 1 who was returned from the Amritsar City East Constituency to the Punjab Legislative Assembly. The petitioner Rajinder Singh and the respondents Nos. 1 to 10 were duly nominated candidates. The respondents Nos. 6 to 10 withdrew their candidature and the petitioner and the respondents Nos. 1 to 5 contested the election. The petitioner and the contesting respondents received votes as under:—

- (1) S. Sarup Singh ... 8716 (Returned candidate)
- (2) Shri Het Ram ... 3378 (Respondent No. 2)
- (3) Shri Khushpal Singh ... 1035 (Respondent No. 3).
- (4) Shri Faqir Chand ... 267 (Respondent No. 4).
- (5) S. Harnam Singh ... 182 (Respondent No. 5).
- (6) S. Rajinder Singh ... 8148 (Petitioner).

The polling in the constituency was held on the 4th and 5th January, 1952 and the result of the election was announced by the Returning Officer on the 1st of February, 1952 which was gazetted on the 8th of February, 1952. The petitioner was a party candidate on behalf of the Indian National Congress and the respondent No. 1 was the official candidate of the Akali Party. It is alleged in the petition that the voters of Abadi Gujarpura from vote No. 6920 to 7344 and of Abadi Anngarh from vote No. 1 to 523 as published in the Electoral Rolls of the Amritsar City East Constituency between Civil Lines, Ghee Mandi Gate, and Bhagtanwala Gate were excluded in contravention of the Representation of the People Act, 1950; that the Electoral Rolls as finally published were final and were to remain in force until the 30th September, 1952; that this exclusion was further wholly arbitrary and unauthorised, as Abadi Gujarpura is situated within the limits (between Ghee Mandi Gate and Bhagtanwala Gate), and the delimitation of Constituency could only be varied under the orders of the President of India in accordance with the Act XLIII of 1950; that by this illegal, unwarranted and unauthorised exclusion, the petitioner has been deprived of a fair chance of being elected; that according to the programme published prior to the holding of the election, the electors living in Kucha Punjab Singh of Division No. 5 had to poll their votes on 5th January, 1952; that the Presiding Officer incharge of Polling Station No. 22 Sabzi Mandi Babeksar near Guru Ram Dass High School, Amritsar had the votes of some of the residents of the said Kucha polled on the 4th of January, 1952, thus causing a confusion in the minds of the electors as to the exact date of the polling of their votes; that this confusion deprived a large number of voters from the exercise of the electoral right to vote in the Constituency and prejudicially affected the chances of the petitioner being elected and that the election for the said reason is wholly void. It is also alleged in the petition that the respondent No. 1 has been guilty of the following corrupt practices:—

(a) That in contravention of Schedule VI to Rule 118 of the Representation of the People (Conduct of Election and Election Petition) Rules 1951 respondent No. 1 or his election agent employed on payment more than the authorized number of persons as clerks for the purposes and in connection with his election; that the detail of all the persons employed is given in Annexure A prepared from the entries in parts B and J of the Return of Election Expenses filed by respondent No. 1, that as the entries in the Annexure would show, more persons than authorised were employed at any one time, not to talk of the other six who had a disputed

claim against respondent No. 1; that this illegal expenditure by employing more than the permissible limit is clearly a major corrupt practice within the meaning of Section 123 of Act 43 of 1951;

(b) That respondent No. 1, his agent and other persons with the knowledge, connivance or consent of respondent No. 1 or his agent employed tongas, cycles and rickshaws for the conveyance of the voters to and from the polling station free of charge to them; that although this corrupt practice was indulged in on an extensive scale the petitioner so far has been able to trace out conveyance as mentioned in the Annexure B to this petition;

(c) That respondent No. 1 either himself or through his agent as also through the instrumentality of the Akali or Panthic Party and its leaders widely circulated posters and delivered speeches calculated to create in the minds of the electors an impression that they would incur divine displeasure or spiritual censure and that not to vote for the Panth and its candidate was to stab the entire Panth in the back and that it would amount to treachery for which the Sikh electorate would have to suffer, that this propaganda was nothing short of undue influence directed towards inference with the free exercise of the electoral right of the electors and that the speeches of the Akali leaders were published and widely circulated by the three organs of the Akali party, namely, "Akali", "Parbhat" and "Ajit";

(d) that respondent No. 1 was adopted by Ram Garhia Central Election Board, Amritsar as their candidate and many posters were printed and pasted throughout the constituency asking the voters of the Ramgarhia community to vote for respondent No. 1, thus interfering with the free exercise of their right; that meetings were held in Gurdwara Kot Rallia Ram, outside Sultanwind Gate where-in failure on the part of the electorate of the community to support the candidature of respondent No. 1 was threatened with ex-communication and expulsion from the Ramgarhia *baradari*, that this completely interfered with the free exercise of the electoral right of voters. The details of this corrupt and illegal practice are given in the Annexure D.

(e) (i) That in several cases votes were polled in favour of respondent No. 1 by persons who themselves were not the voters and who impersonated some one who was mentioned as a voter and that instances of this type which came to the knowledge of the petitioner are mentioned in Annexure E(i);

(ii) That in many cases votes had been polled in favour of respondent No. 1 by persons who were not the voters the details of which are given in the Annexure E(ii);

(f) That respondent No. 1, his agents or other persons interested in him with the connivance of respondent No. 1 or his agents published such statements of facts as were false. The full particulars of corrupt practices are given in the Annexure F;

(g) That respondent No. 1 or his agents and others made statements and systematic appeals either himself or through his agents to the voters to vote or refrain from voting on ground of caste, community or religion and used and appealed to religious symbols for furtherance of the prospects of the election of respondent No. 1, the full particulars of the corrupt practices being given in the Annexure G; and

(h) That the return of election expenses filed by respondent No. 1 is false and fictitious, that it is irregular and incomplete, full particulars being given in the Annexure H;

It is further alleged that respondent No. 1 and his agents are liable to be disqualified in accordance with the provisions of Act XLIII of 1951.

The petitioner prays that the election be declared to be wholly void or that the election of S. Sarup Singh respondent No. 1 be declared to be void and that such other disqualifications as are warranted by the Act may be imposed on persons found guilty of corrupt practices.

The respondents Nos. 2 to 10 did not care to appear in spite of due service and *ex parte* proceedings were taken against them. The respondent No. 1 strenuously contested the petition. He admits that the polling of the Constituency was held on the 4th and 5th of January, 1952 in accordance with law and rules; but pleads that the allegations made by the petitioner in para. 9 of the petition are incorrect; that there was absolutely no violation of the limits of the

Constituency and there was nothing arbitrary or unauthorised; that the authorities competent to act under the law and rules lawfully ordered the amendments of the relevant electoral rolls; that the Tribunal has no jurisdiction to decide the matter, as the electoral rolls as finally published are final and binding on every body; that the votes were polled in accordance with the published polling programme; that no confusion was caused in the minds of the electors, that the petitioner is estopped from raising the objection mentioned in para. No. 10 of the petition; that in any case there was no material effect on the election; that para. No. 10 of the petition is liable to be struck off for want of full particulars; that the election of the respondent is perfectly valid and lawful and that no corrupt practice was ever committed; that the respondent never employed for payment more than authorized persons for the purpose and in connection with his election; that the full particulars of the alleged corrupt practices had not been given and, therefore, the allegations contained in those paras. of the petition are liable to be struck off; that the Return of Election Expenses is neither false nor fictitious; that it is correct, complete and regular and is in accordance with law; that in any case there was no material effect on the election and that the petition is bad in law, frivolous and vexatious.

On 27th of October, 1952, we framed the following preliminary issues:—

1. Are the allegations or portions thereof contained in the petition and the enclosure so vague that they are liable to be struck off? If so, what is its effect?
2. Is the Tribunal competent to try the allegations covered by Paragraphs 9, 10 and 12 of the petition?

By our order dated 6th December 1952 we found issue No. 1 against the respondent. Our finding in respect of the preliminary issue No. 2 was that we could not go into the allegations mentioned in para. 9 of the petition relating to the voters of Abadi Gujarpura and Abadi Anngarh. Our order dated 6th December 1952 in respect of the decision of the preliminary issues may be read as a part of this judgment.

On merits the following issues were framed by our order dated 10th December 1952.

1. Is the petitioner estopped from raising the objection mentioned in para. No. 10 of the petition?
2. If not, did the Presiding Officer of Polling Station No. 22 have the votes of some of the residents of Kucha Panjab Singh polled on the 4th January, 1952, and was thus a confusion caused in the minds of some of the electors and did this prejudicially affect the chances of the success of the petitioner as alleged in para. No. 10 of the petition?
3. Has the respondent No. 1 been guilty of the corrupt practices mentioned in clauses A to G of Para. No. 11 of the petition and the relevant annexure mentioned in the said para.? Onus objected to in respect to clause (a) of Para. No. 11.
4. If so, what is its effect?
5. Is the petitioner not entitled to raise the objections mentioned in Para. No. 12 of the petition regarding the return of expenses?
6. If the issue is decided against the respondent, is the return of election expenses filed by respondent No. 1 false, fictitious and defective as alleged in para. No. 12 of the petition, and if so, what is its effect?
7. Are the respondent No. 1 and his agents liable to be disqualified as alleged in Para. No. 13 of the petition?
8. To what relief, if any, is the petitioner entitled?

**Issue No. 1.**—The learned counsel for the respondent No. 1 did not advance any arguments on this issue and it has not been shown how the petitioner is estopped from raising the objection taken up in para. No. 10 of the petition. The issue is found against respondent No. 1.

**Issue No. 2.**—The plea taken up in para. No. 10 of the petition was not pressed in the course of arguments by the learned counsel for the petitioner. In fact no evidence was led on this point. The issue is decided against the petitioner.

**Issue No. 3.**—The point for determination is whether the respondent No. 1 has been guilty of the corrupt practices mentioned in clauses (A) to (G) of para. No. 11 of the petition and the relevant annexure of the said para. The learned

counsel for the petitioner did not advance any arguments in respect of the allegations contained in clauses (B) to (G) of the said para. and the relevant annexures and did not press the same. We find that the allegations contained in the said clauses and the annexures have not been established. We are now left with clause (A) of the said para. and its relevant annexure (A). The allegations contained therein have been strenuously pressed by the petitioner and both the parties have led considerable evidence in respect of them. The petitioner alleges as follows:—

“That in contravention of Schedule VI to Rule 118 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951 respondent No. 1 or his Election Agent employed for payment more than the authorised number of persons as clerks for the purposes and in connection with his election. The detail of all the persons employed is given in annexure (A) prepared from the entries in parts “B” and “J” of the Return of Election Expenses filed by respondent No. 1. As the entries in the Annexure would show, more persons than authorised were employed at any one time not to talk of the other six who had a disputed claim against respondent No. 1. This illegal expenditure by employing more than the permissible limit is clearly a major corrupt practice within the meaning of Section 123 of Act of 1951”. The relevant Annexure A is as follows:—

“That the total number of voters in the Amritsar City East Constituency is not more than 46,800. Under rule 118, Schedule VI of the Representation of People (Conduct of Elections and Election Petitions) Rules 1951 respondent No. 1 could employ only one clerk for payment in connection with the election. But respondent No. 1, has, at times, employed more than one clerk, as is evident from part B of the Return of Election Expenses filed by the said respondent. The names of various clerks employed for payment by the said respondent or his agent on various dates are given hereunder in a chronological order:—

Dates	Names of the clerks
5-12-51 to 10-12-51	1. Piara Singh
11-12-51 to 17-12-51	1. Indar Bir Singh 2. Piara Singh
18-12-51 to 20-12-51	1. Indar Bir Singh 2. Piara Singh 3. Kalvinder Kaur
21-12-51 to 23-12-51	1. Balkar Singh 2. Piara Singh 3. Kalvinder Kaur
24-12-51 to 25-12-51	1. Piara Singh 2. Kalvinder Kaur
26-12-51 to 27-12-51	1. Mohan Singh 2. Piara Singh 3. Kalvinder Kaur
1-1-52	1. Piara Singh 2. Nirmal Tej Singh 3. Kalvinder Kaur
2-1-52 to 3-1-52	1. Santokh Singh 2. Piara Singh 3. Nirmal Tej Singh 4. Kalvinder Kaur 5. Jai Singh
4-1-52 to 5-1-52	1. Piara Singh 2. Nirmal Tej Singh 3. Kalvinder Kaur 4. Jai Singh

In addition to the said persons respondent No. 1 or his agent employed for payment the following six more persons as clerks whose names are entered in part J of the Return of Election Expenses filed by the said respondent, as the claims of these persons are stated to be disputed:—

1. Avtar Singh clerk.
2. Kishan Singh clerk.
3. Pritam Singh Panchhi clerk.
4. Gyanl Kahan Singh clerk.
5. Rajindar Kaur Raj clerk.
6. Rajindar Singh clerk.

In his written-statement the respondent No. 1 denies that any corrupt practices were committed. It is stated that the respondent No. 1 never employed for payment more than the authorised persons for the purpose and in connection with his election. The correctness of the details given in annexure (A) is denied. It is further denied that more than one clerk or one messenger were employed at one time by the said respondent. It is further pleaded that most of the names mentioned in the annexure were polling agents from the start or volunteers or workers who were paid out of pocket expenses, that some of these persons were working in turns without contravening the provisions of the law applicable, that the word "clerk" has been used in the general sense, that it does not affect the factum of employment as a polling agent or relief agent or messenger as the respondent's Duty Register would show. It was also urged that even otherwise any employment not made by candidate or his election agent does not contravene the provisions of Schedule VI.

The petitioner in his statement as P.W. 24 simply states that S. Khushpal Singh P.W. told him that there were several paid workers in the camp of S. Sarup Singh respondent. It appears he has no personal knowledge about the alleged corrupt practice, e.g., he admits in cross-examination that he does not know whether Kalvendar Kaur was polling agent of respondent No. 1. He relies upon the statements of P.Ws. 14, 15, 16 and 23 (S. Jagjit Singh, Shri Sundar Das, S. Raghubir Singh and Sardar Khushpal Singh respectively) on this point. They depose that there were many workers of the respondent No. 1 P.W. 23 who was admittedly a strong supporter of the petitioner admits in cross-examination that Avtar Singh, Pritam Singh, and Kalvendar Kaur were the polling agents of respondent No. 1.

In rebuttal the respondent No. 1 placed himself into the witness-box and produced R.Ws. 2, 4, 5, 6, 8, 10, 17, 19, 21, 22, 23, 25, 26, and 27 (S. Kuldip Singh Virk Magistrate, Kishan Singh, Kahan Singh, Piara Singh, Balkar Singh, Jogindar Singh, Jai Singh, Mohan Singh, Kalvendar Kaur, Rajindar Singh, Nirmal Tej Singh, Autar Singh, Gurdip Singh and Bhan Singh respectively). The R.W. 2 has produced the polling agent forms filed by the respondent (R.W. 2/2 pages 1 to 268). R.W. 2/4 is the Election agent from dated 1st February 1952 of S. Bhan Singh which goes to show that he was appointed as an Election Agent by the respondent on 1st February 1952 (i.e., after the polling was over.) It is in the statement of R.W. 2 that there were in all 34 polling stations and 49 polling booths in the East Amritsar Constituency. R.W. 4 Kishan Singh states that he was employed as a clerk by respondent No. 1 from 16th October 1951 to 22nd October 1951. He avers that he never worked for the respondent at any time other than the said period and that he was the only employee of S. Sarup Singh during that period. R.W. 5 Kahan Singh deposes that he worked as a clerk of the respondent from 23rd October 1951 to 4th November 1951 only. R.W. 6 Piara Singh says that he worked for S. Sarup Singh from 5th December 1951 to 5th January 1952 at the instance of Jogindar Singh who was his (R.W. 6's) friend. He admits that he consented to work honourarily; but later on, as his financial condition was bad his friend Jogindar Singh (R.W.) paid him Rs. 60, vide receipt P.W. 2/1A. It is also in his statement that S. Sarup Singh personally never employed him nor did he assign him any duties nor did he pay him anything. The witness also never demanded any payment from the respondent. Balkar Singh (R.W. 8) avers that he was appointed as a polling agent of the respondent and that he worked for three days, i.e. from 21st December 1951 to 23rd December 1951 when he fell ill and had an attack of T.B. R.W. 10 Jogindar Singh had brotherly relations with the respondent and was a supporter of his. He supports the statement of Piara Singh R.W. and avers that he did not tell the respondent that he had deputed any persons to work during the elections. He further admits that S. Sarup Singh never employed Piara Singh and did not pay him anything.

R.W. 17 Jai Singh was a polling agent of the respondent and worked from 2nd January 1952 to 5th January 1952. R.W. 19 Mohan Singh also deposes that he was appointed as a Polling Agent of the respondent and worked on 25th and 26th December, 1951. R.W. 21 Shrimati Kalvendar Kaur states that she was employed as a messenger of the respondent and worked from 18th December 1951 to 5th January 1952 as such. R.W. 22 Rajindar Singh avers that he worked as a polling agent of the respondent. R.W. 23 Nirmal Tej Singh worked as a messenger from 1st January 1952 to 5th January 1952. R.W. 25 Avtar Singh says that he was appointed as a polling agent of the respondent and that he was present at the polling booth on 4th January 1952. The relevant polling agent form bears his signature. R.W. 26 Gurdip Singh, R.W. 27 Bhan Singh and R.W. 28 Sardar Sarup Singh respondent also fully prove the contention put forth in the written statement. R.W. 27 Bhan Singh was appointed as an Election Agent of the respondent on 1st February 1952, i.e. on the day of the counting of votes. He explains that every person who was employed and to whom payment was made was loosely termed as a clerk and that neither the respondent nor he ever employed Piara Singh.

S. Sarup Singh as R.W. 28 states as follows:—

"As soon as I applied for the ticket of the Akali party I employed Kishan Singh to work in my election office or a monthly remuneration. He remained in my employment till the 22nd October, 1951. From 23rd October Gyani Kahan Singh worked in my office till 4th November 1951. From 5th November 1951 Shrimati Rajendar Kaur worked as a clerk. As the election dates were approaching I handed over the charge of the election office to S. Bhan Singh. He worked in an honorary capacity. Bhan Singh was given directions to be scrupulously careful in observing the electoral laws and regulations. After the polling in my constituency was over I got busy with the election of the State Legislative Council. I asked S. Bhan Singh to prepare the return of election expenses and instructed him to mention all the items of expenditure incurred during the election campaign. When the return of election expenses was brought to me for my signature I asked Bhan Singh whether he had complied with my instructions, and on an affirmative answer being given I signed these papers without personal scrutiny. Some of the employees mentioned in the return of election expenses worked as my polling agents. It was for the first time that I learnt that they were shown as clerks when I perused the election petition of S. Rajindar Singh directed against my election.

Avtar Singh, Indar Bhai Singh, Jai Singh, Pritam Singh, Rajindar Singh and Santokh Singh mentioned in the Return of election expenses as clerks were actually my polling agents.

Shrimati Kalvendar Kaur worked in my office as a messenger and has been wrongly shown as a clerk in the Return of election expenses. I never committed any corrupt practice in the employment of persons in my election.

Avtar Singh was never working as my clerk. I never employed Piara Singh.

Originally my office during the elections was in Doctor Sardul Singh's place at Chauk Lachhmansar; but later on it was shifted to inside Chatwind Gate. There was one Sub-office in Bagh Ramanand. There was no Sub Office in Kot Baba Dlp Singh. There was one room there which was not used as Sub Office, but as a resting place for the workers. One room was hired which was to be used as an office, but actually it was not used as such. Neither I nor my election agent nor any one else on my behalf employed at any one time more than one clerk."

This statement of the respondent is fully supported by the R.Ws. mentioned above. The polling agent forms and the Duty Register also show that the oral evidence relied upon by the respondent is worthy of credence. There are no grounds why the respondent and the said R.Ws. should be disbelieved.

Before proceeding to give our finding on the point in dispute it would be proper to quote the relevant law.

Rule 118 of the Representation of the People Rules is as follows:—

"No person other than, or in addition to, those specified in Schedule VI shall be employed for payment by a candidate or his election agent in connection with an election."

Schedule VI (Rule 118) is as under:—

"Persons who may be employed for payment by candidates or their election agents in connection with elections.

At all elections:—

- (1) One election agent,
- (2) One counting agent, and
- (3) One clerk and one messenger:

Provided that in the case of an election in a Parliamentary Constituency or an Assembly Constituency or a Council of States Constituency the number of clerks and messengers who may be employed for payment shall be one clerk and one messenger for every seventy-five thousand electors on the electoral roll of the Constituency or portion thereof. At elections in which the method of voting by ballot boxes is followed the following persons may be employed for payment in connection with each such election in addition to the persons specified in (1) (2) and (3) above, namely:—

(a) One polling agent and two relief agents for each polling station or where a polling station has more than one polling booth, for each polling booth or for the place fixed under Sub-Section (1) of Section 29 for the poll and;

(b) One messenger at each polling station or where a polling station has more than one polling booth, at each such polling booth, or at the place fixed under sub-Section (1) of Section 29 for the poll”

“The incurring or authorising by a candidate or his agent of expenditure, or the employment of any person by a candidate or his agent, in contravention of this Act or of any rule made thereunder shall be deemed to be major corrupt practice under Section 123(7) of the Act. Under Rule 46 a candidate or his election agent may, at least three days before the commencement of the poll, appoint such number of agents and relief agents as may be prescribed to act as polling agents.

Under rule 14 of the revocation of the appointment of a polling agent under Sub-Section (1) of Section 48 shall:—

(a) in the case where the appointment is revoked not less than seven days before the commencement of the poll, be lodged with the Returning Officer.

“Agent” includes an election agent, a polling agent and a counting agent and any person who, on the trial of an election petition or of an offence with respect to any election, is held to have acted as an agent in connection with the election with the knowledge or consent of the candidate.

No definition of a clerk has been given in the Act. According to the Oxford dictionary “clerk” is a person employed to keep accounts, copy letters, make entries etc. or a scholar or penman.

In the present case before us the respondent has succeeded in showing that Indarbir Singh, Balkar Singh, Mohan Singh, Avtar Singh, Rajindar Singh, Pritam Singh Panchhi, Jai Singh and Santokh Singh were polling agents of respondent No. 1 and worked as such. Ujagar Singh, Kulvinder Kaur and Nirmal Tej Singh were appointed as messengers of the respondent and worked as such. It has also been established that Kishan Singh, Kahan Singh and Rajindar Kaur Raj worked as clerks of the respondent, but not at one and the same time. He had not more than one clerk at a time. The statement of the respondent is straightforward and we have no hesitation to accept the explanation given by him. That explanation is also supported by documentary evidence consisting of the polling agent forms and the duty register. The evidence adduced by the respondent is cogent, consistent and satisfactory. In fact the version given by the respondent and his election agent Bhan Singh is also supported to some extent even by Khushpal Singh P.W. who was a zealous worker of the petitioner. It seems to us that the respondent completely relied on Bhan Singh and signed the Return of election expenses without caring to see the implications of its contents. There is no manner of doubt that the respondent in doing so acted rather negligently. The term clerk was used loosely in the said Return. There was absolutely no guilty knowledge or intention on the part of respondent or his election agent. In fact the respondent himself was his own election agent during the election days and Bhan Singh was appointed as such on 1st February 1952, i.e., after the expiry of polling on the day when counting was to take place. It is a well-settled proposition of law that there can be no corrupt practice without a corrupt motive. It is, therefore, obviously the duty of the petitioner in the present case to show that the respondent or his election agent or any one else acting with the connivance of the respondent or his agent, had a corrupt motive. This enquiry



is at least a quasi-criminal enquiry and therefore, the evidence has got to be considered as at a criminal trial and in cases where there is a doubt as to the proof of a charge against the candidate, the benefit of the doubt should go to him.

The learned counsel for the petitioner contends that R.W. Piara Singh was appointed as a clerk by the respondent for payment or by Jogindar Singh who acted as his agent and, therefore, the respondent was guilty of the corrupt practice mentioned in Section 123(7) of the Act. After carefully considering the evidence on record we are of opinion that there is no force in this contention of the learned counsel. The respondent emphatically denies that he ever employed Piara Singh. From the statements of Piara Singh, Jogindar Singh and Bhan Singh also it is clear that the respondent did not employ Piara Singh, did not give his consent to his employment, and had no knowledge of the appointment by Jogindar Singh. We find that Jogindar Singh was at best a sympathiser or supporter of the respondent and that he was not his agent. Moreover, in para. 11(A) the petitioner does not allege that the respondent's agent employed for payment more than the authorised number of persons as clerks. His specific allegation is that the respondent or his election agent employed more than the authorised number of persons as clerks. As such, this plea cannot now be taken up. We have given our best and anxious consideration to the evidence on record and find that no corrupt practice mentioned in Section 123(7) of the Act has been proved to have been committed by the respondent or his agent in contravention of the Representation of the People Act, 1951 or of any rule made thereunder. No corrupt practice as alleged in para. No. 11(A) of the petition has been proved to have been committed by the respondent or his agent or any person acting with the connivance of the respondent or his agent. The issue No. 3 is accordingly decided against the petitioner.

*Issue No. 4.*—As we have found issue No. 3 against the petitioner, this issue does not arise and need not, therefore, be discussed.

*Issue No. 5.*—It was not pressed by the learned counsel for the respondent and is, therefore, decided against the respondent.

*Issue No. 6.*—This issue also was not pressed by the learned counsel for the petitioner in the course of arguments. It has not been shown how the Return of election expenses filed by the respondent No. 1 is false, fictitious or defective as alleged in para. No. 12 of the petition. The making of the Return of election expenses is not false in any material particular. The issue is found against the petitioner.

*Issue No. 7.*—As no corrupt practice has been established, there is no question of imposing any disqualification.

*Issue No. 8.*—In view of our finding above the petition falls and is, therefore, dismissed. Having regard to all the facts and circumstances of the case we direct the parties to bear their own costs.

Announced.

CAMP AMRITSAR;

29th May 1953.

(Sd.) CHHAJU RAM, Member,

Election Tribunal, Jullundur.

I agree.

(Sd.) MOHINDRA SINGH PANNUN, Member.

The 29th May 1953.

I agree.

(Sd.) SHAMSHER BAHADUR, Chairman.

The 29th May 1953.

## ANNEXURE

## ELECTION PETITION No. 181 of 1952.

S. Rajinder Singh *Versus* S. Sarup Singh and others

## ORDER

(PER CH. CHHAJIN RAM, *Member, Election Tribunal*)

## ORDER

S. Rajinder Singh has brought this petition against S. Sarup Singh and others on the allegations that the parties to this petition were duly nominated as candidates for election to the Punjab Legislative Assembly from the Amritsar City East Constituency on 5th November, 1951, that the respondents Nos. 2 to 10 have been impleaded, as they were duly nominated, that the respondents Nos. 6 to 10 withdrew their candidatures in accordance with Section 37 of the Representation of People Act, 1951, that respondents Nos. 1 to 5 contested the election, that the contesting respondents and the petitioner received votes as shown in para. No. 7 of the petition, that the petitioner was the party candidate on behalf of the Indian National Congress and respondent No. 1 was the official candidate of the Akali Party, that the voters of Abadi Guparpura from vote No. 6920 to 7344 and of Abadi Anngarh from vote No. 1 to 523 as published in the Electoral Rolls of the Amritsar City East Constituency between Civil Lines Ghee Mandi Gate and Bhagatanwala Gate, were excluded in contravention of the Representation of the Peoples Act, 1950, that the Electoral Rolls as finally published were final and were to remain in force up to the 30th day of September, 1952, that this exclusion was further wholly arbitrary and unauthorised, and that by this illegal and unauthorised exclusion petitioner has been deprived of a fair chance of being elected, that according to the programme published prior to the holding of the election the electors living in Kucha Punjab Singh of division 5 had to poll their votes on the 5th January, 1952, but the Presiding Officer incharge of Polling Station No. 22, Sabzi Mandi Babeksar, had the votes of some of the residents of the said Kucha polled on the 4th January, 1952, thus causing a confusion in the minds of the electors as to the exact date of the polling of their votes, that the confusion has deprived a large number of voters from the exercise of the electoral roll right to vote in the Constituency and has also deprived the petitioner of a fair election of the electorate and has prejudicially affected the chances of the petitioner being elected, that the respondent No. 1 has been guilty of the corrupt practices mentioned in para. No. 11 of the petition, that the return of election expenses filed by respondent No. 1 is false and fictitious, and not in accordance with law, and for the reasons given above, the petitioner prays that the election be declared to be wholly void or that the election of S. Sarup Singh respondent No. 1 be declared to be void. The respondent No. 1 S. Sarup Singh raised preliminary objections that the allegations contained in the petition and the annexure are so vague that they are liable to be struck off and that the Tribunal is not competent to try the allegations covered by paragraphs 9, 10 and 12 of the petition.

From the preliminary objections in the written statement the following preliminary issues were framed:—

1. Are the allegations or portions thereof contained in the petition and the annexure so vague that they are liable to be struck off? If so, what is the effect?
2. Is the Tribunal competent to try the allegations covered by paragraphs 9, 10 and 12 of the petition?

*Issue No. 1.*—The contention of the learned counsel for respondent No. 1 that the allegations contained in the petition are vague and they should therefore, be struck off, is devoid of any force. We have carefully gone through these allegations and the annexures, and are of opinion that these allegations in the petition and the annexures are not so vague as to entail their rejection. The petitioner will have to confine himself to these allegations and the facts given in the petition and the annexures and while recording evidence, we will take care that he is not permitted to introduce any new matter or instance. In the circumstances we find the issue against the respondent.

*Issue No. 2.*—The learned counsel for the respondent in the course of arguments conceded that the Tribunal is competent to go into the allegations covered by paragraphs 10 and 12 of the petition, and in the circumstances we have now to consider or only the allegations contained in paragraph No. 9 of the said petition. In para. No. 9 of the petition it has been mentioned that the voters of

Abadi Gujarpura from vote No. 6920 to 7344 and of Abadi Anngarh from vote No. 1 to 523 as published in the Electoral Rolls were excluded in contravention of the Representation of the Peoples Act, 1950 and that this exclusion was wholly arbitrary and unauthorised. The ordinary presumption of law is that when a certain procedure has to be followed in doing a certain thing, then the said procedure must have been followed according to law unless the contrary is proved. In the circumstances in the present case before us there is a presumption that all the procedure laid down for the revision of the Electoral Roll must have been duly followed and it is for the petitioner to show that it was not done so. Under rule 18 of the Representation of the Peoples (Preparation of Electoral Rolls) Rules, 1950, the orders made by the revising authority are final and these orders passed by the revising authority cannot be questioned before the Election Tribunal. In the present case before us the petitioner has not given any facts to show how the exclusion mentioned above was arbitrary or unauthorised and as such it is not possible for us to go into these allegations. We, therefore, are inclined to hold that we cannot go into the allegations mentioned in paragraph No. 9 of the petition.

(Sd.) CHHAJU RAM, Member.

The 6th December 1952.

I agree.

(Sd.) M. S. PANNUN, Member:

The 6th December 1952.

I agree.

(Sd.) SHAMSHAR BAHADUR, Chairman

The 6th December 1952.

[No. 19/181/52-Elec.III/9397.]

**S.R.O. 1287.**—Whereas the election of Shri Brajraj Singh of Manikbar, Hazur Tehsil, Rewa, as a member of the Legislative Assembly of the State of Vindhya Pradesh, from the Gurh constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the Peoples Act, 1951 (XLIII of 1951) by Shri Keshava Prasad, resident of Uprahati, Rewa;

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

#### BEFORE THE ELECTION TRIBUNAL VINDHYA PRADESH AT REWA

ELECTION PETITION No. 3/141 of 1952.

Shri Keshau Prasad, r/o Uprehti, Rewa—*Petitioner.*

*Versus*

1. Shri Brijraj Singh, r/o Manikbar, Hazoor Tehsil, Rewa.
2. Shri Rudra Man, r/o Village Hardiha, Huzur Tehsil, District Rewa.
3. Shri Sheo Kumar Sharma, r/o Comsciate, Rewa.
4. Shri Sheo Prasad, r/o Village Deogaon, Huzur Tehsil, Distt. Rewa—*Respondents.*

#### CORUM:

Shri E. A. N. Mukarji, M.A. LL.B.—*Chairman.*

Shri Umashankar Prasad, B.A. B.L.—*Member.*

Shri G. L. Srivastava, M.A. LL.B.—*Member.*

#### ORDER

1. The Petitioner, as also the four Respondents, were duly nominated candidates for a seat in V. P. Legislative Assembly from Gurh Constituency at the last election, and as a result of the counting of votes polled by each of the 5 candidates, Respondent No. 1 was declared elected.

2. The election of respondent No. 1 to the V. P. Legislative Assembly was challenged by the petitioner on various grounds enumerated in sub-paras. (a) to (t) of para. 7 of the petition. All the allegations contained in these sub-paras. were categorically denied and controverted by respondent No. 1. Respondent No. 3 in his written statement substantially supported the petitioner.

3. Six issues arising out of the pleadings were accordingly framed by us on the 10th December, 1952. These issues are as follows:—

I(a) Is the constitution of the array of the respondents defective by reason of non-joinder of Shri Ravendra Singh and Shri Madsudan Prasad?

I(b) Is such defect, if any, fatal to the maintenance of the petition?

II. Is the election of respondent No. 1 void and liable to be declared as such because the ballot boxes used in the election were defective and contrary to the mandatory provisions of the law and could be unlocked and ballot papers could be taken out without their seals being broken?

III. Has there been infringement of the provisions of the R.P. Act, 51 and of the Rules framed thereunder as given in paras. 7(b) to (f), J, K, L, and M of the petition? If so, what is the effect?

IV. (a) Were no adequate arrangements made for the safe transport of ballot boxes and packets etc. and for their safe custody after the close of the poll, with the result that such boxes could be tampered with and were in fact tampered with by extraction of ballot papers from the same and introduction into the ballot boxes of respondent No. 1?

(b) Was this done with the connivance of respondent No. 1, his agents and supporters?

V. Did the member of the Congress Party as well as patwaris, kanungos, teachers of Government Schools and other officials of Government, at the instance and with the connivance of respondent No. 1, his agents and workers intimidate and exert undue influence on the voters to vote for respondent No. 1 and threaten them with eviction from their holdings, enhancement of rent and being sent to Jail?

VI. To what relief, if any, is the petitioner entitled?

4. The questions involved in issue No. I(a) and I(b) were decided by our order dated the 26th November, 1952. On the 17th January, 1953, which was the first date fixed for recording the petitioner's evidence, the petitioner put in an application before us withdrawing the allegations made in sub-paras. (c) to (h), (j), (m) to (r) and (t) of para. 7 of his petition. He further stated in his petition that he would only rely on the evidence of demonstration to be tendered in case 11/239 on 20th January, 1953 and on some documents requisitioned from the office of D. C., Rewa.

5. Later, on examining the returns of account of ballot papers in form No. 10 (Ex. P.W. 4/1 to P.W. 4/29), and those in form Nos. 14 and 16 (Ex. P.W. 4/30 to P.W. 4/40) the petitioner was satisfied that the discrepancies pointed out in sub-paras. (k) and (l) of para. 7 of his petition were not real ones, and so the learned counsel for the petitioner did not press these points in his argument before us.

6. Hence the only issue pressed and argued before us at the end of the trial is *Issue No. II* which reads as follows:—

II. Is the election of respondent No. 1 void and liable to be declared as such because the ballot boxes used in election were defective and contrary to the mandatory provisions of the law and could be unlocked and ballot papers could be taken out without their seals being broken?

#### FINDINGS

7. It is in the evidence of P.W. 1 Shri Musharraf Husain, Under Secretary, Judicial Department, V. P. Government, Rewa, who worked as Presiding Officer at some polling stations at the last election, that the ballot boxes used at the election were of the same design as Ex. P.W. 2/1 (attached to file No. 13/260) and that the paper seals used were also exactly like the one exhibited as Ex. A-2 (in file No. 11/239). At the instance of the petitioner this witness sealed this ballot box Ex. P.W. 2/1 according to the instructions Ex. A-1 (in file No. 13/260) which he admitted to have received for the purpose, at the last election.

Shri Hakim Singh, P.W. 2, who worked as Presiding Officer at some polling stations of Raipur Constituency, was similarly asked to seal a ballot box. He

stated, however, that he had forgotten the written instructions received by him at the last election.

In order to prove that the ballot boxes used in all the polling stations of this Constituency (namely Gurm, constituency) during the last election, were defective and could be opened without damaging their paper seals, a demonstration thereof was held before us by one Jai Singh P.W. 3. The ballot box P.I. relating to Mukundpur Assembly Constituency which had been sealed by Shri Hakim Singh P.W. 2, was placed before Jai Singh, who with the aid of a needle  $3\frac{1}{2}$ " long and 2 crochet needles  $5\frac{1}{2}$ " long and one crochet needle 6" long, opened the ballot box without damaging the paper seal appreciably. He first pulled out the wire which was twisted at the knob, then he pushed the two knots on the thread and shifted them upto the lac seal at a distance of about 1" from the knob. After pressing the paper seal inside with his two thumbs he pulled out the string which operates the bolt, but while turning the window cover he broke the thread seal and was then able to open the box. It may be noted here that this box had been sealed by Shri Hakim Singh P.W. 2, who had pasted the paper seal keeping it loose so as to permit a finger to be inserted between its two folds. Shri Jai Singh P.W. 3 was a polling agent of his brother who was a candidate for V. P. Legislative Assembly seat from Churhat Constituency, at Baghar polling station, where he alleged to have noticed that before the commencement of the poll the slit of the ballot box had somehow got closed, and the Presiding Officer had already fixed the paper seal in it. The Presiding Officer at first got perturbed at this, but, as stated by Jai Singh, he managed, with the help of a needle, to open the ballot box and its slit, without damaging the paper seal. Shri Jai Singh states that he adopted the same method in opening the box before us, but under the two conditions mentioned above, namely, the paper was pasted loose and the thread with lac seal was extended to the edge of the lid, which however, also broke while he was trying to open the box. No doubt the printed instructions Ex. A-1 (in file No. 13/260) for sealing ballot boxes supplied to Presiding Officers of various polling stations do not contain any definite directions about pasting the paper seal after keeping it very tight, nor is the length of the thread, over which lac seal is to be affixed specifically prescribed in these instructions.

But we find that clause 5 of Rule 21 of the Representation of People (Conduct of Election and Election Petition) Rules 1951 clearly directs that the "paper seal or the other seals used in a ballot box shall be affixed in such a manner that it will not be possible to open the box without breaking such paper seal or other seals or any thread on which the other seals have been affixed".

Shri Musharraf Husain P.W. 1 similarly deposes that "there were no instructions about the distance for the sealing, but we were instructed to seal it in a manner that it could not be tampered with". Hence it was the duty of the Presiding Officers to seal the ballot boxes in such a way as would prevent any tampering with the ballot boxes and the contents thereof without breaking the paper and other seals. To fulfil the purpose of the law, envisaged by clause 5 of Rule 21 quoted above, the Presiding Officers were expected to paste the paper seals tight and to keep the length of the thread such as would enable them to affix the lac seals thereon but would afford little chance of the knots of the thread near the knobs being shifted much farther from the knob. The demonstration by Shri Jai Singh P.W. 3 does not disclose any intrinsic mechanical defect in the design of the ballot boxes used in the last election, because any box with internal lock however securely made, may be capable of being opened with the use of dexterity or skill. The demonstration shows however that if Presiding Officers failed to comply carefully with instructions contained in clause 5 of the Rule 21 of the Representation of People (Conduct of Election and Election Petition) Rules 1951, and sealed the ballot boxes in a defective manner, such defectively sealed ballot boxes could be opened without appreciable damage to the paper seal, although even then the thread seal was liable to break in the process. Such non-compliance of the Rules by the Presiding Officers is a fact which cannot be presumed in any case. It is a matter to be proved in each case. We find that such proof is totally wanting in the present case.

8. In the course of his arguments, Shri A. P. Pande, Advocate for Respondent No. 1, questioned the relevancy of the demonstration made in this court by P.W. 3 Jai Singh who was able to open a ballot box without breaking its paper seal, as mentioned above. Shri Pande contended that Jai Singh not being an expert within the meaning of section 45 of the Indian Evidence Act, his testimony was not relevant and that if his performance be taken as a demonstration in court, the Evidence Act does not provide for the relevancy and use of such demonstration in judicial proceedings. P.W. 3 Jai Singh does not profess to be and is not an expert and his evidence is certainly not relevant as an expert's opinion.

9. The second part of Shri Pande's argument urging that the act of P.W. 3 Jai Singh in open court accompanied by his verbal statement and conduct noted in his deposition from step to step while he opened the ballot box should be ruled out as inadmissible is more interesting than convincing. This argument was based on the alleged non-existence of any provision in the Evidence Act making such evidence relevant and it was, therefore, urged that this evidence should not be considered at all. This contention loses sight of the following pertinent definitions and provisions of the Indian Evidence Act and other enactments in force:—

(i) "Proved": A fact is said to be *proved* when, after considering *the matters before it*, the court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists (definition of "proved" in section 3 of the Indian Evidence Act).

We have underlined the words "the matters before it" for the purpose of showing that the framers of this Act have not used the word "evidence" instead of "matters" though the former has been defined just before the definition of "proved". This should not, however, be understood to mean any matters but only matters which can be legally or judicially considered. We have elaborated the point hereinafter.

(ii) "Fact" means and includes

(1) Anything, state of things or relation of things capable of being perceived by the senses;

(2) Any mental condition of which any person is conscious.

(iii) So also the definitions of the expressions "facts in issue" and "Evidence" may be looked at the same interpretation clause *viz* section 3 of the Indian Evidence Act. We do not reproduce them here.

(iv) Under Section 60 of the same Act if oral evidence refers to the existence or condition of any material thing, the court may require its production.

(v) Under C. 18 R. 18 C.P. Code and under section 539B and section 293 Code of Criminal Procedure Code inspection or view by jury etc. is permissible and these results are classed as judicial materials for consideration of the court.

(vi) Section 11 of the Evidence Act:—

"Facts not otherwise relevant are relevant—

(i) If they are inconsistent with any fact in issue or relevant fact,

(ii) If by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable". We wish to remark that this section need not be stretched beyond its legitimate limits for fitting in P.W. 3 Jai Singh's evidence with it. Normally and easily this evidence fall within the purview of section 11 without unduly straining its language.

10. P.W. 3 Jai Singh has stated that a Presiding Officer succeeded in opening a ballot box in his presence without breaking the paper seal and he repeated the same process while giving evidence in this case. In any view of the matter, such evidence relating to a fact in issue is relevant to suggest that in open judicial proceeding it is not permissible to a court or tribunal to observe what a witness does to expose an alleged defect of design in a material thing which can be got produced in court under the proviso to section 65 of the Evidence Act is to make a parody of the law of evidence. The provisions of the law adverted to above are comprehensive enough to make such evidence admissible.

11. Shri A. P. Pande cited a Privy Council decision, reported in I.L.R. 31 Bombay page 382 (*Kessowki Issnr versus G.I.P. Rly. Co.*) as an authority in support of his proposition. A perusal of this decision will show that it does not support the learned counsel's contention. Their Lordships held in that case that the appellate Court did not decide the case on the testimony given at the trial as to what took place on the night of the accident but "by the Judge's observation of what they saw on another night altogether". At page 392 Lord Robertson who delivered the judgment made the following remarks:—

"..... Their Lordships find it impossible to admit the testimony on such procedure or the soundness of such conclusions. Even if the question of light could be isolated from the rest of the case, there was

no ground whatever for dispairing of sound results being yielded and, in fact, this was demonstrated by the excellent judgment of the trial judge.....”

12. The use of the word “demonstration or performance” in relation to P.W. 3 Jai Singh's testimony cannot take it out of the category of legal evidence. We therefore hold that the evidence of P.W. 3 Jai Singh in so far as it purported to prove the alleged defect of the design of the ballot box by actual handling of the box in court is legally admissible. The assessment of value of his evidence is a different matter.

It has been proved in this case that where the Presiding Officers while sealing the ballot boxes used at different polling stations of this constituency, had pasted the paper seals loosely and kept the thread bearing the lac seals long enough to reach the extremity of the upper lid, the said ballot boxes could be opened without breaking the paper seals, but we may make it clear that the finding does not necessarily lead to the result that the type of the ballot boxes used contained any intrinsic mechanical defect. Moreover the careless sealing of ballot boxes and the fact of tampering are facts which are to be proved in each particular case, by credible evidence, which as remarked above, is totally lacking in this case. Mere presumption cannot take the place of proof. However in cases where credible evidence about tampering is found to exist, the fact that ballot boxes can be opened without damaging the paper seals, would be an important piece of evidence to be taken into consideration. In such cases where there is reliable evidence to show further that tampering of ballot boxes took place, it may materially affect the result of the election. We find however that such evidence is non-existence in this case, and we have to decide accordingly.

13. Next, another important question which arises for our consideration is as to whether the fact that ballot boxes could be unlocked and opened without breaking their paper seals, if sealed carelessly, and in contravention of clause 3 of Rule 21 of the Representation of People Act (Conduct of Elections and Election Petitions) Rule 1951 would amount to contravention of the mandatory provision of the R.P. Act and the Rules relating to the conduct of elections made thereunder and whether the election of respondent No. 1 can be declared void for this reason.

14. The learned counsel for the petitioner has in support of his contention on this score referred to sections 17, 56, 58 and 59 of the R.P. Act 1951 and Rule 21 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951 and finally to section 100(2)(c) of the R.P. Act 1951.

15. Under section 17 of the R.P. Act the Governor or Raj Pramukh of a State on the expiration of the duration of a State Assembly seat or on its dissolution has, by a Notification published in the official gazette to call upon the assembly constituency to elect members *in accordance with the provisions of the Act or the Rules and orders made thereunder* ..... Section 56 and 58 of the R.P. Act are not very material for our present purpose inasmuch as time for poll has to be fixed by proper authority under section 56, while section 58 directs fresh polls in case of destruction or loss of the ballot boxes or in case of tampering with them after the polls. Section 59 directs that votes shall be given by ballots in such a manner as may be prescribed. We may note that, as stated above, the petitioner has given no evidence to prove that the ballot boxes used in this constituency had any inherent mechanical defect, or that such ballot boxes were, in fact, tampered with.

16. The learned counsel for the petitioner has based his whole argument mainly on the first clause of Rule 21 of the R.P. (Conduct of Election and Election Petition) Rules 1951. It relates to the design and construction of the ballot boxes to be chosen and approved by the Election Commission. The material portion with which we are concerned at present reads thus:—

“It shall be so constructed that the ballot papers can be introduced therein but cannot be withdrawn therefrom without the boxes being unlocked and seals being broken”. The subsequent clause of this Rule contains directions to the Presiding Officers for sealing the ballot boxes in the presence of the candidates or their polling agents before the polling starts in such a manner as to guard against the possibility of its being opened without breaking its paper seal.

17. The learned counsel for the petitioner has laid great stress on the above quoted passage of Rule 21 and contended that the ballot boxes chosen and approved of by the Election Commission and used for polls at the last elections were such as could be opened and ballot papers removed therefrom without breaking their paper seals and consequentially these boxes were not in conformity with

the above rules. It was argued that because of the violation and breach of this rule in the matter of selecting this particular pattern of the ballot boxes, the election has not been in accordance with the provisions of the R.P. Act and Rules made thereunder as provided in section 17 of the R.P. Act 1951 and that this Tribunal should declare the election of respondent No. 1 to be void under section 100(2) of the R.P. Act, 1951.

18. We are unable to accept this broad contention of the learned counsel for the petitioner. Under rule 21 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951, the Election Commission was the sole authority to prescribe the pattern and design of the ballot boxes to be used at the last elections according to the directions given thereunder. In our view this Tribunal could go into the question of propriety or otherwise of the selection of the pattern by the Election Commission only if the same had been done in flagrant disregard of the directions contained in clause 1 of Rule 21 quoted above. If for example, the Election Commission had prescribed an open basket or tray for collecting and storing ballot papers at different polling stations, it could be held that the same was done in utter disregard and violation of the basic principle of election and directions given under the rule framed by the Parliament. It is not so in the present case. We consider that the ballot boxes of the type of Ex. P1 prescribed and approved of by Election Commission are not such as could be easily opened without breaking or damaging their paper seal, if the same had been sealed by the Presiding Officer strictly according to the directions contained in clause 5, Rule 21 which may for convenience be re-quoted here:—

“The paper seal or other seals used in the ballot boxes shall be fixed in such manner that it shall not be possible to open the ballot boxes again without breaking such paper or other seals or the thread on which paper seals have been affixed”. We doubt if Shri Jai Singh could open the ballot box, had the paper seal been pasted tightly as was intended under clause 5. Moreover in opening the ballot box, Shri Jai Singh broke the lac seal over the thread. We consider that the Election Commission *prima facie* selected and prescribed ballot boxes of good construction and design, such as could not ordinarily be opened without damaging or breaking the paper seal.

19. The fact that the ballot boxes could be opened by use of dexterity or skill of a high order, without breaking the paper seal, does not prove that the construction of such ballot boxes was mechanically defective and that the Election Commission failed to comply with Rule 21(2) quoted above.

20. We, therefore, find that the Election Commission while selecting and approving of the design of the ballot boxes used in this Election paid due regard to the directions contained in Rule 21 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951 and that the ballot boxes were constructed in substantial compliance with the direction of this rule. It is however, to be noted that these boxes may not prove equal to superior mechanical cunning and force against which an inner fastening can seldom be proof.

21. In face of this finding the case of Mahadev *versus* Bholanath reported at page 86 of 5 I.L.R. Allahabad cited by learned counsel for the petitioner has no application to the present case. In this reported case a sale of immoveable property was held without any previous attachment of the property, and hence their Lordships of Allahabad High Court held that the sale was void *ab initio*. On the above analogy the learned counsel for petitioner has urged before us that an election without a proper ballot box is void in the same way as a sale without attachment. This analogy is not very happy. No doubt the selection and approval of ballot boxes according to the direction of law is a vital prerequisite of election as the attachment of property is a necessary condition precedent to a valid sale according to the aforesaid ruling. But in the case of said auction sale, attachment of the property in any shape or form was entirely missing while in the case before us there was a very substantial compliance with the provisions of law in the selection and approval of the design of ballot boxes. We, therefore, hold that the selection and approval of the ballot boxes in question does not invalidate this election.

22. As indicated above the petitioner chooses to stand or fall by the decision of Issue No. II in this case. No other irregularity or breach of the rules relating to the conduct of elections or provisions of the R.P. Act has been proved or urged before us. There is not an iota of evidence before us indicating that the ballot boxes were tampered with or that their contents were extracted. It appears that the petitioner was unable to substantiate the serious allegations on which other issues were raised and therefore at a later stage chose to withdraw them.



23. At the stage of argument it was made clear that a plea about non-compliance with the provisions of law or rules made thereunder would not justify the declaration that the election of successful candidate was void unless and until it was proved that such non-compliance had materially affected the result of the election. In this connection the grounds for declaring election to be void contained in section 100 of the R.P. Act 1951, were referred to and particular attention was drawn to sub-section 2 of clause (c) of this section. It was however urged on behalf of the petitioner that this vital condition of clause (c) of sub-section 2 of section 100 should be deemed to have been satisfied in this case on account of the defective design and vulnerability of the ballot box chosen for the election. A sort of presumption in favour of the petitioner was sought to be raised in regard to this vital question. This process of reasoning, vitiated as it is by several tall assumptions, is illogical and unsound. It presuppose facts which have not been proved and militates against the express provision of the aforesaid clause (c) by which we are all bound. The possibility of a thing happening or of the performances of an act cannot be held to be synonymous with the actual happening of the thing or with the actual performance of the act. At the most such possibility, if proved, may give rise to a vague suspicion. But suspicion cannot be a substitute for proof.

24. We have carefully gone through the report of two English cases, Haverford-Election Petition and Borough of Hackney reported in 9L R.C.P. page 7 and 20 and 31 L.T. page 69 respectively. Typed copies of the relevant extracts from these decisions which were shown to us were placed before us. It is not necessary for us to refer to the difference between the provisions of the R.P. Act, 1951 and English law on which these decisions were based because certain basic principles of law were infringed in these cases and certain presumptions in the proved circumstances were held to be justifiable. The application of basic principles cannot be divorced from the facts of these cases. The facts of the case before us are entirely different and do not admit of the application of the principles enunciated in these cases. These English cases do not afford much assistance to the contention of the petitioner.

25. There may be cases in which the presumption embodied in the well known legal maxim *Omnia præsumentur legitime facta denec probeture in contrarium* may be weakened by proved facts or circumstances. At any rate this is not a case of that type. Firstly, there is complete absence of any evidence of any kind about tampering with ballot boxes or extraction of ballot papers. Secondly, it is remarkable that in this election an unsuccessful socialist candidate secured 3,099 valid votes as against 3,744 polled by the successful candidate Respondent No. 1 while the petitioner got 1,847 votes. If there was any substance in the allegations of widespread tampering coupled with the opportunity for tampering, these figures could easily have been far more comfortably re-assuring in favour of the alleged *persona grata*.

26. Our conclusion, therefore, is that it has not been proved in this case that the result of this election has materially been affected by the design and construction of the ballot boxes and we find accordingly.

27. The result is that we dismiss this election petition with costs which we assess at Rs. 300 and order that this amount be paid by the petitioner to the respondent No. 1.

In this case the petitioner was represented by Shri N. N. Mukherji, B. C. Dey and Manmohan Nath, Advocates, and Respondent No. 1 by Shri A. P. Pande, Shri Santosh Kumar Shrivastava, Shri S. D. Pande, Advocates and Shri Harish Kumar Shrivastava and Shri G. P. Misra, Advocates.

#### ANNOUNCED.

(Sd.) E. MUKARJI, *Chairman*.

(Sd.) U. S. PRASAD, *Member*.

(Sd.) G. L. SHRIVASTAVA, *Member*.

[No. 19/141/52-Elec.III/9404.]

By Order,

P. R. KRISHNAMURTHY, Asstt. Secy.

